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Supreme Court of the United States

OCTOBER TERM, 1941

No._____

ALBERT C. DULANEY, PETITIONER,

versus

M. COPPARD, TRUSTEE, RESPONDENT.

Petition for Writ of Certiorari

TO UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

Direct and Concise Supporting Brief For Petitioner.

CONCISE STATEMENT OF GROUNDS FOR THIS COURT'S JURISDICTION.

Section 240(a) Fed. Act. Feb. 13, 1925, Chap. 229, 431 Stat. 936, as amended by act of May 22, 1939, found on Page 5 of Appendix to Revised Rules of the Supreme Court of the United States provides: In any case, civil or criminal, in a circuit court of appeals, * * * it shall be competent for

the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, * * * that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect as if the cause had been brought there by unrestricted * * * appeal. Paragraph (c) provides that no judgment or decree of a circuit court of appeals * * * shall be subject to review by the Supreme Court except as provided above. After the creditors' first meeting had been held and bankrupt had been examined by any creditor, or attorney, so requesting, 73 days additional time for further examination of bankrupt and filing of objections to discharge was given in open court by the referee, and there being no right legally to examine any witness after the first creditors' meeting, except for cause shown, no examination of bankrupt was thereafter carried on in behalf of any creditor, the trustee being the only person having the right to ask for an extension, failing to request same, but a firm of creditors who had taken no part in the proceedings, except to file their claim, asked by mail for additional extension of time without any verified motion, without evidence, without notice or hearing of any kind to anybody, and with no opportunity to be heard, a creditor having no right to make the motion for the extension of time without first applying to the Trustee, assets and property belonging to clients of bankrupt, who is a lawyer, books of account showing such ownership of such assets for years before the filing of the petition in this matter, no argument being permitted and no chance to present any facts or the law concerning the additional tying up of other peoples' property for an additional 90 days thereby greatly and irrevocably injuring the owners, one of whom was at the point of death and needing these assets for medicines in time of her desperate

illness, the referee signing in secret the pretended order giving a 90-day extension without anybody having his day in court, the referee under the law receiving commissions on assets held by him in the bankruptcy court to be the property of the bankrupt, with the referee receiving no commissions in case the assets were held to be the property of others as clearly shown by the books with no evidence otherwise, subpoena duces tecum being issued at the request of the referee requiring the bankrupt to produce at the hearing before the referee 3 days later all books of account showing among other things funds held by him in sacred trust and privileged from disclosure under the law because of the relation of attorney and client, attorney for trustee in his pretended brief, asked for by the district judge, which said attorney tried to turn into an affidavit sometime after the introduction of proof was ended, such affidavit-brief making no contention as to the proof that reasonable notice and an opportunity to be heard are requisite to the validity of every order entered by the referee, all of these showing that there is involved matters of an administrative character presented in the ordinary course of the administration of a bankrupt estate, disputes relative to scope of examination under the act having been held to constitute a proceeding, decision in the court immediately below, as shown by the opinion, being made without really going into the merits of the important and vital constitutional questions involved, the opinion in the court immediately below herein being in conflict with many decisions of other circuit courts of appeal in the same matter and concerning the same questions, the decision being of a federal question in conflict with applicable decisions of this court, whereby the Supreme Court of the United States, for the reasons named, has jurisdiction to issue its Writ of Certiorari herein so that these important constitutional

questions may be really gone into for the first time in this matter.

CONCISE STATEMENT OF THE CASE.

Petitioner and respondent by attorney have agreed on a statement of the case under Federal Rule 76, (R. 2-34). The first meeting of creditors in this matter was held on September 29, 1942, and, after the examination of bankrupt by all creditors, or their attorneys, seeking same, the referee in open court gave additional time for examination and filing of objection to discharge, if any, to December 10, 1942, (R. 2), thereby allowing 73 days, (R. 30) for additional examination; under clear principles of law that are fundamental, there being no right to any examination of any witness, by anyone, after the first creditors' meeting, except for special cause shown; the Federal Statute involved being Bankrupt Act of 1938, Section 14 b, and after the expiration of the time fixed in the referee's order for additional examination, there must be an extension of time "granted by the court" before there can be any further examination. The decisions of the courts establish clearly that harassing examinations are not to be tolerated, and, if attempted, summary reference may be had to the District Judge to protect against such. No further examination of any witness by anyone is permitted, unless proper cause therefor is shown by the right kind of motion made by the person entitled to make same; also reasonable notice, hearing, argument, evidence and all the other requisites of due process have to be complied with before there is any right at all to examine any witness at any time by anybody, after the first creditors' meeting has been held. Referee in bankruptcy caused to be issued a subpoena duces tecum requiring bankrupt to produce at the hearing three days thereafter all books of account showing financial condition

each year as attorney, or otherwise, thereby forcing the disclosure of privileged matters under the law required to be held sacred by every attorney to prevent the disclosure in open court of matters known only by reason of the relation of attorney and client; client having made disclosure to his attorney relying on the privileged character of so sacred a relation, with the law placing the seal of silence on all such matters so that client and attorney could freely confer and work together concerning the client's affairs, property, investments, free from any Gestapo system of forced disclosure in a land where such privileged matters have been respected from time immemorial, the process of court being used to force disclosure of privileged matters entitled to its protection, (R. 2). On Page 3 of the record it is agreed that on December 9, 1942, the day before the day to which the additional examination was extended in open court by the referee at the time of the first creditors' meeting, Biggers, Baker and Lloyd, attorneys of Dallas, Texas, who had not taken any part in any of the proceedings except by filing a claim without making any request of the Trustee, who alone had the right to make such application, sent by mail to the referee an unverified application for the extension of time, no notice being given of the filing of this application by the referee in a "Star Chamber" proceeding without any opportunity to be heard given to anyone, not in public, but in private signing an order seeking to extend the time 90 days further.

The record further shows on Page 3, next to last paragraph, that since March 10, 1943, after notice to the bankrupt and opportunity to be heard thereon, extensions of time have been granted several times on application of the Trustee by the Referee, thereby showing that the first application is void and not made by anyone entitled so to do. When motion was made to set aside the void order prompt-

ly after it was discovered, the referee overruled the motion, petition for review being filed, and after hearing, the District Judge, without reference to any of the constitutional questions involved, denied the petition for review by oral statement in open court, and upon appeal the Circuit Court of Appeals for the Fifth Circuit handed down a short opinion on November 18, 1944, reported so far only in 145 Fed. (2d) 468, not going into the constitutional questions involved in detail and cited no authorities, by reason of which it became necessary to file herein Petition for Writ of Certiorari from the United States Supreme Court to the Circuit Court of Appeals, 5th Circuit, there being involved herein a principle that every step in a judicial proceeding and before the referee in bankruptcy must be after reasonable notice and an opportunity to be heard or any such order is void, referee being unqualified to sign an order extending the time for examination 90 days because under the law he could get pay for his work and commissions on assets only when they are held by the referee to be the individual property of the bankrupt, but if the referee's decision be otherwise he could collect no commissions, being the principle laid down in the Tumey case, opinion being written for the United States Supreme Court by Chief Justice William Howard Taft; this highly important question not even being referred to in the written opinion in the court next below.

SPECIFICATIONS OF ASSIGNED ERRORS.

1. After the first meeting of creditors there is no right to examine any witness by anyone at any time, unless there is a special cause shown therefor in a legal and constitutional manner where respect is shown for the fundamentals of proper judicial procedure, for the principles of due process of law, and for those rights considered to be

the law of the land from ancient times in Anglo-Saxon jurisprudence so far back that no one knows when such vital rights were first established and respected. First meeting of creditors in this matter being held September 29, 1942, and now late in March, 1945, 2½ years afterwards, attempt is being made to wear out those whose funds have been tied up by the Referee, the Trustee, and the Trustee's attorney, with a contingent fee contract, acting together and seeking to force the production of assets so as to make commissions and fees herein.

2. Every step in a judicial proceeding and before a referee in bankruptcy must be after a reasonable notice and opportunity to be heard, or any such proceeding is invalid, and void, contrary to the fundamentals of justice and denying to those affected the constitutional right of having each his day in court.

3. Section 14b of the Bankrupt Act of 1938 contains express provisions that such extensions of time can be based only on something "granted by the court", making necessary motion, reasonable notice, hearing and all the other requisites of due process.

4. The Trustee alone can ask for such an extension unless the creditors request him especially and the Trustee refuses to make the motion.

5. Creditors who have taken no part in any other proceedings, except to file their claim, and know nothing about the examination personally have slumbered on their rights, are guilty of laches and will not be heard where they at the last minute send in a mail order motion without any evidence, not even an affidavit, with no notice, no hearing and no motion being made by anyone qualified to make such.

6. The order of extension is void and invalid because there was no notice to anyone although vital rights of owners of assets handled for them by bankrupt for years were affected materially and disastrously by reason of the long drawn out examination for the purpose of wearing out those whose property was being handled in a fiduciary capacity, most of the owners being women; one a frail little woman at death's door and needing her part of the assets for medicines essential to save her from death.

7. Order of extension is void and contrary to due process because there was no hearing of the motion given to anyone.

8. Pretended order of extension is void, not due process or judicial act because not based on any evidence, not even an affidavit, the proceeding being a secret "Star Chamber" proceeding for generations considered contrary to Anglo-Saxon ideas of liberty, fundamental rights and justice.

9. The whole proceeding upon which the void order is based was purely a farce and a tragic disregard of the people's fundamental law because there was no argument and no chance to present any facts or the law by anybody.

10. Order is void because its signing was in secret; a public hearing being necessary to all judicial proceedings.

11. Referee had no right to sign order of extension because he was financially interested so as to disqualify him; being entitled to commissions if he held the assets to be the individual property of the bankrupt, and not entitled to any commissions if his holding in the matter was in accordance with all the evidence showing that the assets belonged to, and had been handled for, others for years before the petition was filed in this proceeding.

12. Subpoena duces tecum issued November 20, 1942, was an attempt to force the disclosure of privileged matters between attorney and client, the disclosure of which by any attorney would show him to be unworthy of his sacred trust.

ARGUMENT SUMMARY.

Order of December 9, 1942, is invalid and void, and the acts of Attorney for Trustee admit this because;

(1) he tries to have Trustee testify to the facts in his affidavit-brief filed a considerable time after hearing before district judge, who requested exchange of briefs, Page 17 of the record showing (second paragraph from end of Page 17) that motion to strike pretended brief was made really because an affidavit was filed under request for exchange of briefs, and

(2) after void order was attempted to be entered, all extensions of time were granted by the Referee on motions made by Trustee's attorney with reasonable notice and opportunity to be heard given to other side, whereby Trustee's own attorney admitted order of December 9, 1942, void.

Even if Trustee's attorney had not admitted that the order of December 9, 1942, was void, there can be no question about such being the case because;

(I) at the first creditors' meeting no examination may be had unless for special cause shown in constitutional manner so as to constitute due process, especially since for more than 2½ years, after first meeting of creditors, attempt is still being made to wear out defenseless women and confiscating their assets, one woman being at death's door and needing the assets to buy medicines;

(II) Collier on Bankruptcy, 14th Edition, Vol. 2, Page 1594, after considering the court decisions during the many

years covered by the 14 editions, correctly states the law: "REASONABLE NOTICE AND A RIGHT TO BE HEARD ARE REQUISITE TO THE VALIDITY OF ANY ORDER ISSUED BY THE REFEREE", no reply to this statement of the law at any time being made by Trustee's attorney, thereby admitting the correctness of this statement of the law;

(III) Section 14(b), Bankruptcy Act of 1938, provides expressly extensions of time must be based on something "granted by the court", that is, motion, notice, hearing, and other essentials of due process;

(IV) Trustee only may make motion for extension of time unless he refuses after creditor applies to him, which creditor has not slumbered on his rights so as to be guilty of laches;

(V) time for extension cannot be granted, where other side makes motion to set aside void order, unless there was notice, hearing, evidence, argument, chance to present facts and law, in public hearing necessary to judicial proceedings, and there must be opportunity for all of such essentials of due process to prevent confiscation, damage and injury to persons owning assets long held for them;

(VI) since Referee was financially interested in the results, he was disqualified from singing the void order, no question being raised as to the other acts of Referee;

(VII) Subpoena duces tecum ordered by Referee violated the sanctity of the sacred trust existing between attorney and client which violation would make it unsafe for client to consult his attorney who was handling assets for him;

(VIII) after raking Hades with a fine tooth comb, Trustee's attorney found a case, or two, where extensions had been allowed where there was no showing of any objec-

tion, or motion to set void order aside, such as was made herein January 28, 1943, (R. 3, last paragraph).

ARGUMENT PROPER.

(1) RIGHT TO EXAMINE WITNESS AFTER FIRST MEETING OF CREDITORS. Collier on Bankruptcy, 14th Edition, a work perhaps the best of its kind, which seems to be a sort of "Bankruptcy Bible" around the office of the Referee whose acts are considered by this petition for Writ of Certiorari, Vol. 2, Page 283: Since there is *"no absolute right to examine anyone,"* Fla. N. B. of Jacksonville v. Kelly, (C. C. A. 5th Cir.), 25 Am. B. R. N. S. 135, 70 F. 2d 730, an order for examination under paragraph 21a is always *discretionary;* Matter of National Grain Corp. (C. C. A. 2d Cir.), 3 Am. B. R., N. S. 510, 299 F. 597. See also In re Andrews, (D. C. Mass.), 12 Am. B. R. 267, 130 F. 383. Matter of Union Mortgage Investment Co., (D. C. Del.), 39 Am. B. R., N. S. 543, 25 F. Supp. 468, and cases cited, and the *order* for *examination* of a witness, whether on *first* or *second examination*, should be for a *special cause shown.* Matter of The Abbey Press, (C. C. A. 2d Cir.), 13 Am. B. R. 11, 134 F. 51 cert. den. 196 U. S. 642, 25 S. Ct. 797, 49 L. Ed. 631. The above authorities show that the *order for examination* of a *witness*, whether on *first* or *second examination*, should be for a *special cause shown.* There is *no proof* of *any kind* showing *anything* in *support* of the *motion for extension* of time for *filing objections* to *bankrupt's discharge* upon which the *pretended order* of *December 9, 1942*, was *based.*

Attempt may be made to justify the void order of December 9, 1942, by Court Rule 6 of the Rules of Civil Procedure for the District Courts of the United States: Time. (b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is

required or allowed to be done at or within a specified time, the court *FOR CAUSE SHOWN* may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order, and etc.

These rules do not apply to bankruptcy matters except by rules promulgated by the United States Supreme Court. Rule 81 (a) (1) Bankrupt General Order 37 provides that in proceedings under the Bankruptcy Act, the Rules of Civil Procedure for the District Courts of the United States shall, insofar as they were *not inconsistent* with the Act, or with these General Orders, be followed *as nearly as may be*, but the court may shorten the limitations of time so as to expedite hearings, and may otherwise modify the rules for the preparation or hearing of any particular proceeding. Since there is a special provision in the Bankruptcy Act about the extension of time for filing objections to discharge in bankruptcy, this provision would apply, and not Rule 6, since such rules are expressly to be disregarded if inconsistent with the Act, the Bankruptcy Act provision being as follows: Act of 1938, Sec. 14 (b). After the bankrupt shall have been examined, either at the first meeting of creditors or at a meeting specially fixed for that purpose, concerning his acts, conduct and property, the court shall make an order fixing a time for the filing of objections to the bankrupt's discharge, notice of which order shall be given to all parties in interest as provided in Section 58 of this Act. Upon the *expiration* of the *time* fixed in such *order* or of any *extension* of *such time granted* by the *court*, the *court shall discharge the bankrupt* if *no objection* has been *filed*.

In construing this statute, or this rule, neither will be given an unconstitutional meaning, or construction. This

principle is so well known and the reason for it so clear, that quoting authorities would be a waste of time. The words *"for cause shown"* found in the *Rule* mean *notice, hearing, evidence,* and the words *"granted by the court"*, require the *same,* because the plainest and clearest of constitutional principles and the practice among English-speaking peoples for so long a time require such. The statute *applies* and *not the Rule* because the *rules* are *expressly* to *give way* if *inconsistent* with the *Act.* "Granted" means *notice, hearing, argument* if desired, and in a *public hearing, "by the court"* showing that it must be a *judicial act,* the *act of a real court* worthy of the *name,* carrying on its proceeding *openly* * * * *not secretly* * * * with the right to *argue the matter,* if desired, and *based on evidence.* The *contention* that *Rule 6 applies* and *gives rights* to *Referee* to act *contrary* to the *fundamentals* of *due process* and *contrary* to *all the fundamentals* of *real judicial proceedings,* as stated by adverse counsel, and the *conclusions of law* of the *Referee* show a claim of a *power* in the *Referee* that has *never been given by any court among English-speaking peoples since early times* so far back as to be *lost in the mists of the past* * * * unknown to any historian. The *arbitrary power* which the *Referee claims* to *have,* if *conceded to him, would mean* the *establishment* of a *Bankruptcy* Ring, *worse* than *anything ever known* in any *bankruptcy,* or *other court,* where even the *rudiments* of *English law* are *recognized.* In Collier on Bankruptcy, 14th Edition, Vol. II, Page 1594, the necessity for notice and hearing as essential to due process of law is stated in this, perhaps the best of all the authorities, in the following language, "REASONABLE NOTICE AND A RIGHT TO BE HEARD ARE REQUISITE TO THE VALIDITY OF ANY ORDER ISSUED BY THE REFEREE". There are many cases cited which have been gathered together as 14

editions of this work on bankruptcy have come out, all of which support the text, and the Trustee's attorney admits the soundness of this statement of the principle of constitutional law involved by presenting nothing in this case at any time heretofore to the contrary of this statement in Collier on Bankruptcy, but in the agreed statement of the case entered into under the Federal Rule 76 there was no notice of the filing of the application for the void order of December 9, 1942, (R. 3) and also with no opportunity to be heard and without conducting a hearing the Referee at the time extended the 73 days to March 10, 1943, all shown in the record, Page 3.

(2) Every step in a judicial proceeding and before a Referee in bankruptcy must be "after a reasonable notice and a right to be heard," or any such proceeding is void.

Above quotation from Collier (R. 20) shows this. In 16 C. J. S., 1141 et seq. Article, Constitutional Law, subhead, "Due Process of Law," it is stated: In the concrete, it (due process of law) means in a contest involving these rights (substantive rights), he (any person) will be accorded the *opportunity* to *contest* the *propriety* of *each step* in the *action* sought to be taken against him.

State v. Broaddus, 289 S. W. 792, 795; 315 Mo., 1279, states * * * due process of law, which means nothing more than that every citizen shall hold * * * property under the protection of the general law which governs society, and, in the concrete, that in a contest concerning these rights, he will be given the *opportunity* to *contest* the *propriety* of *each step* in the action shown to be taken against him, citing.

City of St. Louis v. Railroad, 278 Mo., loc. cit., 211; 211 S. W., 671, Dartmouth College Case, 4 Wheat. 518, 4 L. Ed. 629, these holding that due process requires an opportunity to contest the propriety of each step in the action shown to be taken against him.

(3) Section 14(b) of Bankrupt Act of 1938 expressly provides extensions of time, as herein, can be based only on something "granted by the court".

(4) Trustee alone can ask for an extension unless creditors request him especially and Trustee refuses to make the motion. This is shown by brief made part of the record which is filed in the United States Circuit Court of Appeals in this proceeding and shown on Pages 10 to 13 of such brief now made part of the record.

(5) Creditors guilty of laches may not make the motion. This is discussed in brief referred to next above made part of the record herein being shown on Page 13 of such brief used in the United States Circuit Court of Appeals, 5th Circuit.

(6, 7, 8, 9, 10) Specifications of Assigned Errors, are shown and discussed in the same brief hereinabove referred to and on Pages 14 to 16 thereof.

(11) Referee disqualified from signing pretended order of extension of time because he had a financial interest in the results of the order if held to be valid, being entitled to commissions if assets held to be individual property of bankrupt with Referee not entitled to any commissions if he held these assets belonging to others, all the proof showing these assets had been handled for years by bankrupt as the property of such others. The courts have held that Referee's financial interest would not disqualify him in such matters but all these cases were overruled by the case of Tumey vs. State of Ohio, decision March 7, 1927, opinion written by Chief Justice William Howard Taft, found in 273 U. S. 510, 71 L. Ed. 749, 47 Sup. Ct. Rep. 437. In this case the Mayor of an Ohio town in the suburbs of Cincinnati, was acting as judge in a criminal case, no fees or costs being paid to the judge, except by the

defendant, if convicted. The language of Chief Justice Taft for the Supreme Court covers not only criminal cases but also civil cases; note in 50 A. L. R. 1256 also shows this. We quote: "There is therefore no way by which the mayor may be paid for his service as judge, if he does not convict those who are brought before him." "Officers acting in judicial capacity are disqualified by their interest in the controversy to be decided is of course the general rule * * *." "No matter what the evidence was against him, he had the right to have an impartial judge." Any officer acting in a judicial capacity is disqualified by interest in the controversy to be decided. This language would govern with a civil or a criminal case. This decision has been widely approved all over the United States and the soundness of the constitutional principle, so clearly set out by one of the great Chief Justices of this court, puts the question outside the realm of controversy. The same principle is set out in the Bible where it is said that where a man's treasure is, there will his heart be also.

The mail order motion sent in from North Texas without any evidence of any kind—not even an affidavit—without any notice, hearing, argument, or any other of the essentials of due process, signed in secret by the Referee, was unquestionably contrary to due process. The pretended order was void. The Referee was disqualified to render any decision, or sign this order, because of his financial interest, in addition to the fact that other essentials of due process were lacking as heretofore shown.

(12) Subpoena duces tecum issued November 20, 1942, sought to force by legal process the disclosure of privileged matters by the attorney and client held sacred by every court and every lawyer up to the time the subpoena was issued. More than 2½ years later, at the present time, measuring from December 9, 1942, the time

the Referee signed the void order, assets of others, most of them defenseless women, one at death's door and needing her assets for medicines to keep her alive, show the necesity for this court to act and to go into the constitutional questions involved for the first time and by order, judgment, mandate and opinion, require the lower courts to hold the order of December 9, 1942, void.

Respectfully submitted,

Albert C. Dulaney

ALBERT C. DULANEY,
Petitioner.

Office - Supreme Court, U. S.
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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1944

No. 1168

ALBERT C. DULANEY, PETITIONER,

versus

M. COPPARD, TRUSTEE, RESPONDENT.

Petition for Writ of Certiorari

TO UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

Brief for Petitioner.

ALBERT C. DULANEY,
Petitioner.

LODOVIC PRINTING CO., SAN ANTONIO, TEXAS

Supreme Court of the United States

OCTOBER TERM, 1945

No.....

ALBERT C. DULANEY, PETITIONER,

versus

M. COPPARD, TRUSTEE, RESPONDENT.

Petition for Writ of Certiorari

TO UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

BRIEF FOR PETITIONER

Your petitioner, Albert C. Dulaney, states that this petition for review by issuance of Writ of Certiorari to United States Circuit Court of Appeals for the 5th Circuit is accompanied by certified transcript of record in the case, proceedings in the District Court being shown by agreed statement of the case under Federal Rule No. 76, said transcript also including the proceedings in said United States Circuit Court of Appeals, 5th Circuit, to which Court the writ is asked to be directed so that this Court

may pass on the question of the validity of a pretended order of the referee of December 9, 1942, attempting to give 90 days more time for further examination of bankrupt herein and for filing objections to discharge, greatly damaging owners of assets being handled by bankrupt.

There was no special cause shown in any legal way to the bankruptcy court for any further examination of any witness, the void order being without any notice, without any opportunity to be heard, without due process of law, being not granted by the court but being an attempted and pretended judicial act of the court in a private proceeding like the Court of Star Chamber, all in secret and railroaded through without his day in court to anyone, the request being made by creditors without first requesting the trustee so to do, the trustee alone having the right to ask for an extension of time by an order "granted by the court", the creditors in question having taken no part in the proceedings except to file their claim, vital rights of those whose assets were tied up unjustly, unlawfully, and illegally by the bankruptcy court in reckless disregard of the rights of the owners of these assets, who were not before the court, no hearing of any kind being given to anyone, no evidence being considered, not even an affidavit, no argument, all being the pretended act of the referee alone and in secret in the signing the papers sent by mail to said referee, the referee being disqualified to act in extending the time in this way because under the law he could receive commissions if he held the assets of others to belong to bankrupt personally, but not being entitled to such commissions in case he decided that these assets did not belong to the bankrupt personally, but to others for whom he had been handling them for many years in the capacity of either trustee or attorney, referee by subpoena duces tecum issued November 20, 1942 attempted to force bankrupt

three days later to produce all books of accounts, records and documents showing assets held by him personally or as attorney or trustee or otherwise by seeking to force the disclosure of privileged matter held by all reputable attorneys as sacredly confidential.

At the first meeting of creditors held September 29, 1942 the regular examination of bankrupt provided by the law was held and at the end of such examination participated in by all creditors, or their attorneys, desiring to examine, the referee in open court announced December 10, 1942 as the date fixed within which objections to discharge could be filed, thus giving 73 days for examination of bankrupt and for the filing of such objections, the question of the validity of such void, pretended and alleged order being raised by a motion to set aside same, made to the referee promptly after the secret order became known to bankrupt. A firm of creditors of Dallas, Texas sent in by mail an unverified motion for an extension of time without having taken part in any of the proceedings and without knowing whether or not an extension of time was necessary, without making any request of the trustee for such extension, trustee never having asked for such extension although primarily the trustee alone could make such a motion, no notice being given to anyone, no hearing being had, not even by the makers of the motion, who, 300 miles away in Dallas, Texas, cocked their feet on a table in their law office and puffing a cigar at intervals, dictated to a stenographer the mail order motion supported by no evidence, not even an affidavit, without argument or chance to present the facts, or the law, by anybody, the whole proceeding being in secret in the referee's office like in the old Court of Star Chamber, the referee, as provided by Federal Statutes, being entitled to commissions on assets decided by the referee acting as the bankrupt court to be-

long to the bankrupt, but with no commissions to referee if he held these assets of others not to belong personally to the bankrupt, so that said referee was financially interested in holding the assets to belong to the bankrupt although all the proof showed that these assets had been handled for years by the bankrupt in his capacity as attorney or trustee as the property of others, the referee thereby by reason of financial interest being disqualified from acting or going through the farce of pretending to hand down a judicial decision in the matter, the referee's overruling of the motion to set aside the void order being carried to the District Court by petition for review, the District Court not going into the constitutional questions involved, and, upon appeal to the Circuit Court of Appeals, an opinion was handed down November 18, 1944, 145 Fed. (2d) 468, in which a short opinion was written without citing any of the decisions of the U. S. Supreme Court, any Circuit Court of Appeals, or any Federal District Court, going into the constitutional questions involved where a referee railroaded an extension order through in reckless disregard of the constitutional rights of bankrupt and others whose assets bankrupt was handling as attorney or trustee vitally and greatly injuring the owners of the property without any judicial act or proceeding of any kind being gone into by the bankruptcy court as a court, the opinion of the Circuit Court of Appeals being based on the idea that the Federal Statute did not make notice a condition of entering such order, entirely overlooking and disregarding the plain fact that the whole proceeding was a gross violation of the fundamentals of justice, a violation of the most elemental safeguards thrown around every American citizen to prevent him, or her, from being deprived of property without due process of law and without giving to such citizen his, or her, day in court to which each was entitled.

STATEMENT SHOWING JURISDICTION OF THE UNITED STATES SUPREME COURT. Section 240 (a) of Federal Act of February 13, 1925, Chapter 229, 43 Stat. 936, as amended by Act of May 22, 1939 found on Page 5 of Appendix to Revised Rules of Supreme Court of the United States, provided: In any case, civil or criminal, in a circuit court of appeals, * * * it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted * * * appeal.

Paragraph (c) provides: No judgment or decree of a circuit court of appeals * * * shall be subject to review by the Supreme Court otherwise than as provided in this section. The statement heretofore made shows that there is involved a matter of an administrative character presented in the ordinary course of the administration of a bankrupt estate, disputes relative to scope of examination under the act having been held to constitute a proceeding.

The gross disregard of even the fundamentals of justice and of even the rudiments of due process of law make it imperative that this court should issue its Writ of Certiorari herein so that for the first time the constitutional questions involved may be really gone into by this court and after a real judicial hearing these vital fundamentals of justice shall safeguard and be thrown around the citizen as provided by the peoples' fundamental law of the land; that they may shield and protect such citizens, especially defenseless women in need of medicines necessary to be purchased by funds tied up by the bankruptcy court for the purpose of paying commissions to the referee, the trustee, and a con-

tingent fee to the attorney for the trustee, such questions being presented herewith immediately, decision below being in conflict with applicable decisions of this court.

QUESTIONS PRESENTED AND REASONS RELIED ON FOR ALLOWANCE OF WRIT OF CERTIORARI HEREIN.

(1) The principle of bankruptcy law is elemental that after the bankrupt has presented himself for examination at the first creditors' meeting, where any creditor, or his attorney, may ask any relevant or legally competent question, thereafter there is no absolute right to examine anyone, the order for examination of any witness must be for a special cause shown only, the first creditors' meeting being one of the most important meetings held by the referee and a full and free right of examination being given to all creditors, or their representatives, and before the bankruptcy court shall order further examination of witnesses there must be a judicial determination of the necessity for such and by the stronger reason where 73 days have once been set aside at the first creditors' meeting to hold further examination of the bankrupt, a motion must be made by someone competent in law to make such a motion before there is any right to examine further witnesses in such proceedings, especially where the first meeting of creditors was held September 29, 1942 and the referee has permitted the proceedings still to be drawn out as late as March, 1945, more than 2½ years later, evidently for the purpose of wearing out those whose funds have been tied up by the referee yearning for commissions instead of working for a fee deposited, with the trustee situated exactly the same, and with the attorney for the trustee working for a contingent fee thereby creating a community of interest on the part of the referee, the trustee, and his attorney like

unto the Three Guardsmen who were "all for one and one for all."

(2) Every step in a judicial proceeding and before a referee in bankruptcy must be after reasonable notice and an opportunity to be heard, or such order is invalid and void because not based on due process of law, contrary to the fundamentals of justice and denying to those affected the constitutional right of having each his day in court.

(3) An extension of time sought to be given by the void order, under the express provisions of the statute, Bankrupt Act of 1938, section 14 b, can be based only on an extension of time "granted by the court", requiring reasonable notice, hearing and all the other requisities of due process of law.

(4) No creditor can make a motion for such extension of time without first requesting the trustee so to do, a creditor having no right even to ask for such extension unless he first requests the trustee to make the motion for such extension of time, all being based on the idea that the creditors are like the stockholders of a corporation having no right to interfere with the directors as long as they are managing the corporation properly, the Trustee in bankruptcy being in the position of the board of directors.

(5) The creditors who attempted to make the motion for extension of time having taken no further part in the bankruptcy proceedings except to file an alleged claim were guilty of laches, having slumbered on their rights by not taking part in any examination, not appearing at the first creditors' meeting where every creditor personally, or by attorney, is given the right to examine, no attempt being made to examine during the 73 days thereafter granted by the referee in open court these mail order creditors in

Dallas could not come in at the last minute and ask for an extension of time to examine when they had made no effort to take part in any way at the continued examinations had on September 29, 1942 and from time to time after that date until December 10, 1942, a total period of 73 days, three minutes examination of the books brought into bankruptcy court being sufficient to show that at the time the petition was filed and at the time of the adjudication bankrupt had no assets not exempt, and three hours being ample time to examine the one column showing what belonged to bankrupt from the beginning period of keeping the books sometime about the year 1930 or 1931 clear through to said first creditors' meeting of September 29, 1942.

(6) The pretended, alleged and void order is void, unconstitutional and not due process of law because there was no notice to anyone although vital rights of owners of assets handled for them by bankrupt for years being affected materially and disastrously by reason of a long drawn out examination for the purpose of wearing out those whose property was being handled by bankrupt as trustee and attorney, one of the owners being a frail woman at death's door, the examinations being all for the purpose of enabling commissions to be collected.

(7) Pretended order is void and contrary to due process because there was no hearing of the motion given to anyone, not even to the creditors themselves—the mail order makers of the motion.

(8) Alleged order is void, unconstitutional, not due process of law and not even a judicial act because not based on any evidence * * * not even an affidavit * * * being a secret Star Chamber proceeding, the proceedings of which court, even in memory, raise a noxious stench in the nostrils of all Anglo-Saxon freedman.

(9) The alleged order is void, unconstitutional, not due process of law, not even a judicial act, being purely a farce and a tragic disregard of the peoples' fundamental law because there was no argument and no chance to present any facts, or the law, by anybody, not even by the makers of the motion themselves.

(10) Alleged order is void, unconstitutional, not due process of law, and not even a judicial act because the signing of the order was in secret—a public hearing being necessary to all judicial proceedings.

(11) Alleged order is void, unconstitutional, not due process of law, and not even a judicial act because the referee, who passed on the validity of the order of December 9, 1942, after motion had been made to set aside such void order, could get pay for his work only by holding the assets of others handled for many years by bankrupt as Trustee and Attorney to be the individual property of bankrupt so that the referee and trustee could thereby receive commissions provided by law on such assets, and trustee's attorney would receive a contingent fee, the referee being therefore disqualified to grant any such extension.

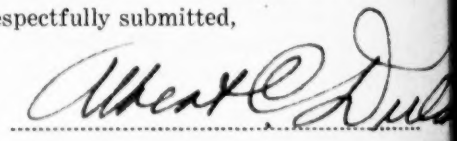
(12) Subpoena duces tecum was issued November 20, 1942, requiring bankrupt to produce at the hearing before the referee three days later all books of accounts, records, and documents showing his individual personal financial condition as attorney, trustee or otherwise thereby seeking to force the bankrupt by judicial process to disclose privileged matters which an attorney has no right to disclose, the disclosure of which by any attorney would show him to be unworthy of his sacred trust.

Attached to this petition and application is a concise brief showing that the pretended extension order was void,

unconstitutional, not due process of law, and a farce of a pretended judicial proceeding, the opinion of the lower court, showing that the above constitutional questions involving the validity of the extension order, should have been gone into carefully by any court seeking to act judicially, especially where important rights of others are involved, thereby giving to everyone his day in court to which he is entitled, all of which is clearly evident through a reading of the opinion of the lower court, and said opinion was also clearly written without, in any wise, going into the fundamentally important question as to whether any judicial officer, judge, court or bankruptcy court, could enter a valid order when a decision one way would make cash commissions for himself while if he decided the other way he would get no pay, this being a fundamental constitutional principle involved in the celebrated Tumey case, opinion being written for the United States Supreme Court by one of its great Chief Justices, William Howard Taft.

Petitioner prays and makes application that the court issue its Writ of Certiorari so that for the first time the vitally fundamental and important constitutional questions shall be gone into judicially and fairly by this court.

Respectfully submitted,



ALBERT C. DULANEY,
Petitioner.

No. 1168

UNITED STATES
CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

No. 10,878

ALBERT COVINGTON DULANEY, APPELLANT,

versus

M. COPPARD, TRUSTEE IN BANKRUPTCY, ETC., APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION.

Brief for Appellant.

ALBERT COVINGTON DULANEY,
Appellant.

LODOVIC PRINTING CO., SAN ANTONIO, TEXAS

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

Appellant by this Appeal raises the question of the validity of an alleged order of the referee of December 9, 1942, attempting to give 90 days more time for filing objections to discharge in bankruptcy proceedings herein. At the first meeting of creditors held September 29, 1942, the referee in open court announced that December 10,

1942 was fixed as a date within which such objections could be filed, thus giving 73 days for such objections, the question of the validity of such extension order being raised by a motion to set aside such order made promptly after the pretended order was discovered. A firm of creditors of Dallas, Texas sent in by mail an unverified motion for an extension of time without making any request of the trustee to ask for such extension, the trustee never having asked for same, the creditor firm never having participated in any examinations of the bankrupt, having filed their claim after the first creditors' meeting, and not participating otherwise in any of the proceedings, no notice being given appellant, no hearing—not even by the makers of the motion, no evidence—not even an affidavit—no argument or chance to present the facts and law by any body, signing and whole proceeding in secret like the Court of Star Chamber, referee and trustee as provided by Federal Statutes being entitled to commissions on assets held to belong to bankrupt, plus perhaps a small deposit fee made when petition was filed, so that each was financially interested in holding the assets to belong to bankrupt though handled for years for others as the property of such others, referee overruling motion to set aside pretended order, which upon petition for review was upheld by the District Court, referee being appointee of such court.

SPECIFICATION OF ERRORS.

Specification 1. Pretended void order being based on motion merely of creditors, such order is a nullity because creditors are not legally qualified under the law to make the motion for the extension of time, without first requesting the trustee so to do.

Specification 2. Such creditors are not legally qualified to make the motion for the extension of time since they

have taken no part in the bankruptcy proceedings except to file their alleged claim, thereby being guilty of laches, having slumbered on their rights by not taking part in any examination, and therefore not entitled to have a useless, void order to be entered because of their neglect of participation and examination of bankrupt.

Specification 3. The pretended order is void, unconstitutional, and not due process of law because there was no notice to anyone, vital rights of owners of assets handled for them by bankrupt being affected materially and greatly because of a long drawn out examination of bankrupt for the purpose of wearing out those whose property was being handled by bankrupt as trustee and attorney, so to get commissions.

Specification 4. The pretended order is void and contrary to due process of law because there was no hearing of the motion given to anyone—not even to the creditors themselves.

Specification 5. The alleged order is void, unconstitutional, not due process of law, and not even a judicial act because same was not based on any evidence—not even an affidavit, being a secret proceeding, like in the Court of Star Chamber—the proceedings in which court even in memory have raised a stench in the nostrils of Anglo-Saxon freemen.

Specification 6. The alleged order is void, unconstitutional, not due process of law, and not even a judicial act because there was no argument, or chance to present the facts and the law by any body.

Specification 7. The alleged order is void, unconstitutional, not due process of law, and not even a judicial act because the signing of the order was in secret.

Specification 8. The alleged order is void, unconstitutional, not due process of law, and not even a judicial act because the referee who passed on the validity of the order December 9, 1942, after motion had been made to set aside such void order, could get pay for his work only by holding the assets of others handled for many years by bankrupt as trustee and attorney to be the individual property of bankrupt so said referee would thereby receive commissions provided by law on such assets, except for a small deposit of $15 to the referee, referee being thereby disqualified to pass on the validity of said void order, and no objections for discharge being filed within 73 days given by valid order, bankrupt is entitled to his discharge under the provisions of the Federal Statutes.

The record in this appeal is made up of an agreed statement of the case under Federal Rule 76 set out in Transcript of Record, beginning on page 2 thereof in which agreed statement it is shown that on September 16, 1942, the voluntary petition of bankrupt was filed in the United States District Court for the Western District of Texas, San Antonio Division, adjudication being entered September 17, 1942, the first meeting of creditors being held September 29, 1942 where in open court the referee fixed December 10, 1942 as a time for filing objections for discharge, entering a written order to that effect, of which notice by mail was given to all parties in interest. November 20, 1942, a subpoena duces tecum was issued requiring the bankrupt to produce at a hearing before the referee three days later, under Section 21-a of the Bankrupt Act, all books of account, records and documents showing his individual, personal financial condition, as ATTORNEY and trustee and otherwise, thereby seeking to force bankrupt to disclose privileged matters which as attorney he had no right to disclose.

Page 3 of the Transcript shows it was agreed that December 9, 1942, Biggers, Baker and Lloyd of Dallas, Texas, whose claim as creditors had theretofore been filed and entered, sent by mail to the referee, an unverified application requesting that further time be extended creditors to file objections to discharge, the trustee not being a party to such application, said creditors having taken no prior active part, nor having appeared in the proceedings. No notice of the filing of this application was given the bankrupt, and on the same date that this application was received by the referee, without any opportunity to be heard, the referee filed an alleged order seeking to extend the time for filing objections to discharge to March 10, 1943, the effort being made by the creditors, the trustee and his attorney and the referee by secret proceedings, attempting to approve a long drawn out examination, notwithstanding as shown on page 30 of the Transcript that the personal affairs of the bankrupt were very simple, no books being kept separately, but by separate columns showing in the books of the trust estate being handled by bankrupt for clients, what was due at any time to the personal account of the bankrupt, the whole purpose of the extension being to wear out those whose assets were tied up for as long a time as possible, thereby hoping for some compromise so that property belonging to others could, regardless of law and evidence, be held to belong to bankrupt so commissions could be realized thereon. The original 73 days allowed more than enough time for going over the simple affairs of the bankrupt, the Transcript on page 3 showing that no objections to bankrupt's discharge had been filed, and also that since March 10, 1943, notice has been given to the bankrupt and an opportunity to be heard has been given, as re-extensions of time for filing objections to discharge have been approved by the referee on application of the trustee—not

a creditor, thereby admitting that the pretended order of December 9, 1942 was void.

January 28, 1943 bankrupt filed with the referee a motion to set aside as void the order of December 9, 1942 extending time for filing objections to discharge, it being the earliest time possible to file such motion on account of the secret proceedings, the alleged order being discovered some time after it was filed by the referee.

February 25, 1943 the referee heard the motion to set aside the void order, and overruled the motion by order entered February 26, 1943. Petition for review was properly taken to the District Court where the District Judge upheld his appointee, the referee.

This appeal has been duly and properly taken in this Court so the question of the validity of the alleged order of December 9, 1942 may be passed on by this Court. Collier on Bankruptcy seems to be considered as a "Bankruptcy Bible" in the office of the referee. It is perhaps the best authority on the subject. Collier on Bankruptcy, 14th Edition, Volume II, page 1594, properly states the principle upheld by the Federal Courts as to referee's orders, being stated as follows: "REASONABLE NOTICE AND A RIGHT TO BE HEARD ARE A REQUISITE TO THE VALIDITY OF ANY ORDER ISSUED BY THE REFEREE". Courts have held that where a litigant's attorney seeks to take a non suit or having case dismissed without prejudice, since any plaintiff as a matter of right may do this if done in proper time, no notice would be required where the defendant on the other side, even if heard, would not be entitled to prevent a non suit being taken. The rule is, however, entirely different as to the orders of the referee. The policy of the bankruptcy law is for a speedy winding up of the affairs of the bankrupt, no long drawn out proceedings being rightfully permitted for the

purpose of wearing out people whose funds were handled by bankrupt, and where the books clearly show that at the time the petition was filed, the bankrupt had no personal financial interest in any of these assets. A REASONABLE NOTICE AND OPPORTUNITY TO BE HEARD ARE ESSENTIAL TO THE VALIDITY OF ANY ORDER OF THE REFEREE. Trustee's Reply Brief in the trial court admits this as correct because no mention is made of it, Tr. pp. 7-17, appellant moving said trial court to strike Reply Brief and grant discharge to appellant, Tr. pp. 18-21, no written response being made to Reply Brief, thereby admitting Appellant's contention to be correct.

In 42nd Corpus Juris, page 480, necessity for notice and hearing in the matter of motions is set out in the following language: "Where the principles of natural justice demand that rights be not affected without an opportunity to be heard, notice of motion will be required, notwithstanding the silence of the statute as to notice of the motion in question* * *. If the granting of a motion is mandatory and does not rest in the discretion of the Court, it may ordinarily be made without notice, whereas notice is necessary if the motion is not grantable of course".

In the case of proceedings before the referee, where the bankrupt has been handling the assets belonging to others whose lives will be vitally affected by the orders of the referee in this proceeding, reasonable notice and an opportunity to be heard are essential to the validity of such orders. Necessity for this reasonable notice and hearing is shown clearly on page 30 of the Transcript wherein it is shown that the personal affairs of the bankrupt were very simple, separate columns showing in the books of the trust estate being handled by the bankrupt, showing any amounts due at any time by the bankrupt for his personal account, a very short time being necessary to look this up

and determine what belonged to the clients of bankrupt and what belonged to him in the way of fees for handling clients' funds, it being shown on page 30 of the Transcript that the trustee called up the bank in which funds where kept in bankrupt's name as attorney, instructing bank not to pay out any such funds, whereby funds belonging to others, clients and beneficiaries of said bankrupt, were tied up for 73 days and much longer periods by reason of extensions of time for filing objections to discharge, it being shown on page 31 of the Transcript that beneficiaries of the trust were entitled to and in need of funds belonging to them, one of the beneficiaries and clients being for weeks at the point of death in a hospital in San Antonio and at home and urgently in need of funds by reason of her sickness and illness, it being shown that the attempt was made to tie up all of these funds belonging to others, the evident purpose being to try to get some compromise so that commissions could be collected, this void order thereby greatly injuring innocent people who were sick, when the books showed plainly that these funds belonged to them.

Notice and hearing also are required by general order in Bankruptcy 23, as follows: "In all orders made by a referee, it shall be recited accordingly as the fact may be, that notice was given and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests."

In the well known Rosser Case 101 F. 562; 4 Am. B. R. 153 (8th Cir. Ct. Appls. 1900)—a leading and oft quoted case—the following language is used:" IT IS CERTAIN THAT NOTICE TO THE PARTIES TO BE AFFECTED OF THE CLAIM AGAINST HIM, AND AN OPPORTUNITY TO BE HEARD UPON IT, ARE ESSENTIAL ELEMENTS OF EVERY PROCEEDING IN A COURT

OF JUSTICE WHICH CAN BE SAID TO CONSTITUTE DUE PROCESS OF LAW, OR TO BE IN ACCORD WITH THE LAW OF THE LAND * * *. IT MUST GIVE HIM NOTICE OF THE CHARGE OR CLAIM AGAINST HIM, AND AN OPPORTUNITY TO BE HEARD respecting the justice of the ORDER or JUDGMENT SOUGHT * * *. JUDICIAL ORDERS OR JUDGMENTS AFFECTING THE LIVES OR PROPERTIES OF CITIZENS IN THE ABSENCE OF SUCH NOTICE AND OPPORTUNITY to the parties affected are VIOLATIVE of the FUNDAMENTAL PRINCIPLES of our laws, and CAN NOT BE SUSTAINED * * *. It is a rule as old as the LAW, and NEVER MORE TO BE RESPECTED THAN NOW, that NO ONE SHALL BE PERSONALLY BOUND UNTIL HE HAS HAD HIS DAY IN COURT; by which is meant UNTIL HE HAS BEEN DULY CITED TO APPEAR, and has been AFFORDED AN OPPORTUNITY TO BE HEARD. Judgment without such citation and opportunity wants ALL THE ATTRIBUTES OF A JUDICIAL DETERMINATION; IT IS JUDICIAL USURPATION AND OPPRESSION, and NEVER CAN BE UPHELD where JUSTICE is JUSTLY ADMINISTERED * * *. No opportunity was presented to him to produce witnesses in his defense nor to be heard upon the issue of fact or of law which was the issue of the ORDER INVOLVED. Such a proceeding LACKS EVERY ELEMENT OF DUE PROCESS OF LAW * * *. IT CONSIDERS WITHOUT NOTICE, CONDEMNS WITHOUT HEARING, AND RENDERS JUDGMENT WITHOUT TRIAL. THE ORDER OF THE REFEREE WAS UNLAWFUL AND VOID."

SO SAY WE that in the case at bar "THE ORDER OF THE REFEREE WAS UNLAWFUL AND VOID."

CREDITORS NOT LEGALLY QUALIFIED TO MAKE THE MOTION FOR EXTENSION OF TIME WITHOUT FIRST REQUESTING THE TRUSTEE TO DO SO.

Collier on Bankruptcy, 14th Edition, Volume 2, page 280, states: "Where bankrupt has already been subject to an examination, he may be ordered to submit to a second examination, if in the discretion of the Court it seems necessary".

Ibid. Page 283. Since there is "no absolute right to examine anyone", an order for examination under paragraph 21-a is always discretionary; and the order for examination of a witness, whether on first or second examination, should be for a special cause shown."

The above statements of Collier and the authorities therein cited show that the order for examination of a witness, whether of first or second examination, should be for a special cause shown. There was no proof of any kind offered showing anything in support of the motion for extension of time for filing objections to bankruptcy discharge, upon which the alleged order of December 9, 1942 was based.

The further statement is there made: "It has been indicated that where a creditor desires examination of a witness, he should first apply to the * * * trustee and if refused, then apply to the court and show that the refusal was unwarranted."

Ibid. Paragraph 21.06. WHO MAY APPLY FOR A PARA. 21a EXAMINATION. "A CREDITOR DESIRING AN EXAMINATION SHOULD FIRST APPLY TO THE * * * TRUSTEE, IF ONE HAS BEEN APPOINTED, AND IF REFUSED, SHOULD THEN ASK THE COURT FOR AN ORDER DIRECTING THE OFFICER TO

UNDERTAKE THE EXAMINATION AND SHOW THAT HIS REFUSAL IS UNWARRANTED."

These creditors had no standing in court to ask for an extension, that being the right of the trustee. The creditors had taken no part in the examination, were not attending the bankruptcy court, and their effort by mail to obtain an extension undoubtedly made the alleged order absolutely void. If the extension could be made legally by creditors nearly 300 miles away not participating in the examination, the bars would be down so that these creditors could harass those who were sick and in need of funds by tying up these funds indefinitely, although the books clearly showed they did not belong to the bankrupt. It would be contrary to the fundamentals of justice and unthinkable in judicial proceedings for any such pretended order to have any validity.

The attempt will probably be made to justify the alleged order under Rule 6 of the Rules of Civil Procedure for the District Court of the United States: Time. (b) Enlargement. "When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Court for CAUSE SHOWN may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period orignially prescribed or as extended by previous order, etc." These rules do not apply to bankruptcy matters except by special general order in bankruptcy promulgated by United States Supreme Court, Bankrupt Order 37, providing that under proceedings under the Bankruptcy Act, the Rules of Civil Procedure for the District Courts of the United States shall in so far as they were not inconsistent with the Act, or with these General Orders, be followed as nearly as may be, etc. The above rule would

have to be given a constitutional construction, and enlargement without notice could apply only to matters that are of right and not those of discretion. The above rule also clearly provides that the enlargement must be FOR CAUSE SHOWN, which means reasonable notice and opportunity to be heard and evidence; otherwise, there would be NO CAUSE SHOWN. In addition to this, there is a special provision in the Bankruptcy Act about the extension of time for filing objections for discharge. This provision would apply and not Rule 6, since such rules are expressly to be disregarded if inconsistent with the Act, the applicable provision of the Bankruptcy Act being as follows: Act of 1938. Sec. 14(b): "After the bankrupt shall have been examined, either at the first meeting of creditors or at a meeting specially fixed for that purpose, concerning his acts, conduct and property, the court shall make an order fixing the time for the filing of objections to the bankrupt's discharge, notice of which order shall be given to all parties in interest as provided in Section 58 of this Act. Upon the expiration of the time fixed in such order or of the extension of any such time GRANTED BY THE COURT, the Court shall discharge the bankrupt if no objections have been filed * * *. The words "granted by the court", and the words of rule 6 above, "for cause shown", both mean notice, hearing, evidence, because the plainest and clearest of constitutional principles, and the practices among English speaking peoples for so long a time require such.

In Sec. 14, paragraph (b), Act of 1938, the word "granted" means reasonable notice, hearing, argument if desired, and in a public hearing; "by the Court", showing that it must be a judicial act, the act of a real court, carrying on its proceedings openly—not in secret—the right to argue the matter if desired and based on evidence, the

arbitrary power to sign suc[h] alleged orders and have them
upheld as valid would mea[n] the establishment of a bank-
ruptcy ring as bad as any[thing] ever known in any bankruptcy
court without even the rudi[ments] of English law and justice
recognized, and with unlin[ited] opportunities to wear out
anyone whose properties [happened] to be handled as at-
torney by a bankrupt.

THESE CREDITORS ALS[O] HAD NO RIGHT TO MAKE THE MOTION BY M[AIL] WHERE THEY WERE NOT PARTICIPATI[NG] IN THE PROCEEDINGS BECAUSE THEIR N[ON-PARTICIPATION] SHOWED CONCLUSIVELY [THAT] THEY WERE GUILTY OF LACHES.

Three men in Dallas, [Texas,] without being known to those whose property they [ought] to confiscate, not daring to confront those whom [they] sought to despoil—women dependent on others for adv[ice,] counsel and supervision over that which belonged to t[hem]—one at death's door with funds needed to buy med[icine]—all these things, if the validity of the pretended or[der] be upheld would result in the confiscation of the proper[ty] belonging to others through endless socalled examinati[ons,] the referee and trustee receiving practically all thei[r] compensation as commissions from assets that come in[to] the bankruptcy, examination being continued at the ille[gal] request of three creditors in Dallas not qualified legal[ly] to make any motion in the matter because they seek to usurp the authority of the trustee, and because they [have] been guilty of laches in not participating in the examin[ation] at all.

THE PRETENDED ORDER OF DECEMBER 9, 1942 IS ABSOLUTELY VOID FOR ANY ONE OF THE FOLLOWING SEVEN REASONS:

1. Dallas creditors not legally qualified to make the motion for extension of time without first requesting the trustee to do so.

2. Such creditors disqualified to make the motion because not participating in the examination, thereby having been guilty of laches.

3. No notice.

4. No hearing—not even by makers of motion.

5. No evidence—not even an affidavit.

6. No argument, or chance to present the facts and the law by anybody.

7. Signing and whole proceeding in secret like Court of Star Chamber, thereby not being judicial proceedings at all, and pretended order absolutely void.

The 73 days originally given by the referee by announcement in open court at the first creditors' meeting, which was also put in the form of an order, gave more than enough time to examine the columns in the books to see whether at the time the petition was filed, any of the funds shown by these trust fund books, afterwards funds held as attorney, belonged to the bankrupt at the time the petition was filed, the whole purpose of the long drawn out examination and extensions of time were for the purpose of attempting in some way for the creditors, the trustee and his attorney, to get at these funds belonging to others, one at death's door, so that commissions might be collected.

We are all familiar with the decision of the United States Supreme Court in the case of Tumey vs. State of Ohio, 71 L. Ed. 749, March 7, 1927, where the mayor of an Ohio town was acting as judge in a criminal case, no fees

or costs being paid to the judge except by the defendant being convicted. Chief Justice Taft, writing for the United States Supreme Court, said, "There is therefore no way by which the mayor may be paid for his services as judge, if he does not convict those who are brought before him. Officers acting in judicial capacity are disqualified by their interest in the controversy to be decided is of course the general rule * * *. No matter what the evidence was against him, he had the right to have an impartial judge".

Counsel for Appellee may quote the cases shown on page 15 of the Transcript cited as authority for the rule that the interest of the referee in commission he may receive from on estate does not disqualify him to act as such: Re: Strobel, 160 F. 916, Lower Court Decision. Re: Abbey Press, 134 F. 51, Cert. Den., 196 U. S. 42; 49 L. Ed. 631; 25 S. Ct. 797. The Tumey case is later than either of these cases, and evidently overrules them.

The record shows that the referee signed the pretended order of December 9, 1942 in secret without judicial proceedings; it also shows the soundness of the decision of the highest federal court in the Tumey case, the opinion being written by a great Chief Justice.

Collier on Bankruptcy, 14th Edition, Volume 2, page 281, uses the following language: "* * * and, if a creditor has been afforded a full opportunity for an examination, of which he did not avail himself, his application will be denied." (Quoting authorities). It will thus be seen that where a creditor has been afforded a full opportunity to participate in the examination and has not availed himself of the opportunity, his application will be denied.

16 C. J. S. 1141 et seq. Article, CONSTITUTIONAL LAW, subhead DUE PROCESS OF LAW, states that in the concrete due process of law means that in a contest involving substantive rights, the litigant will be afforded the

opportunity to contest the propriety of each step in the action sought to be taken against him. (Citing cases).

In 37 Am. Jur. 15, "It has been held that it is clearly within the province of the Court to set aside an improper ex parte order as soon as the Court's attention is called to its character". (Citing cases).

Since ample time has been given to file objections to discharge, and none have been filed, and no valid order has ever been entered extending the time, this Court upon appeal should by opinion and mandate require the vacating of this void order of December 9, 1942, and direct the discharge of the bankrupt.

Respectfully submitted,

ALBERT COVINGTON DULANEY,

Albert Covington Dulaney Appellant.

Office - Supreme Court, U. S.
FILED
12 1945
CHARLES ELMORE CROPLEY

Supreme Court of the United States

October Term 1944.

No. 1168

ALBERT C. DULANEY, Petitioner,

versus

M. COPPARD, Trustee, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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LODOVIC PRINTING CO., SAN ANTONIO, TEXAS

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Supreme Court of the United States

October Term 1944.

No. 1168

ALBERT C. DULANEY, Petitioner,

versus

M. COPPARD, Trustee, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINIONS OF THE LOWER COURTS.

The Findings and Conclusions of the Referee are shown in the Record at pages 21-27.

By Stipulation, the Order of the District Judge for the Western District of Texas, San Antonio Division, sustaining the Referee, is not shown in the Record. (R. p. 24).

The opinion of the Circuit Court of Appeals for the Fifth Circuit, affirming the judgment of the District Court, is reported in 145 F. 2d 468.

BRIEF STATEMENT OF THE CASE.

This was a voluntary bankruptcy. (R. p. 22). At the First Creditors' Meeting, the Referee fixed December 10, 1942, as the time for filing objections to bankrupt's discharge. (R. p. 23). Because no books or records were produced by the bankrupt at the First Creditors' Meeting, Respondent, Trustee, filed application for further examination under Section 21(a) of the Bankruptcy Act, and on the same date, after hearing, an order granting said application was entered fixing November 23, 1942, as the date for commencement of such examination. (R. p. 23).

On the latter date, in response to subpoena duces tecum, the bankrupt produced a mass of miscellaneous records, cancelled checks, deposit slips, check stubs, corporate records, files and books covering a money-lending and investment business, dating back about eleven (11) years. And, on December 10, 1942, the time originally fixed for filing objections to bankrupt's discharge, the Trustee and his attorney, without benefit of accounting or auditing assistance, were examining these records, and had not as yet determined whether to oppose the discharge of the bankrupt. (R. p. 9). As yet there are no assets in the estate of bankrupt.

Respondent vehemently denies that funds or property involved have been so tied up as to cause any person to suffer for lack of same; but, on the other hand, the record shows that the bankrupt withheld funds from alleged beneficiaries, when demanded, before bankruptcy. (R. p. 15 bottom).

The order extending time was entered on December 9th, 1942, the day before the last date fixed for filing objections.

RESPONDENT'S FIRST COUNTER-PROPOSITION.

AN ORDER OF THE REFEREE, APPLIED FOR BY CREDITOR OF BANKRUPT, EXTENDING TIME ORIGINALLY FIXED FOR FILING OBJECTIONS TO BANKRUPT'S DISCHARGE, WHICH TIME EXPIRED WHILE SECTION 21(a) EXAMINATION OF BANKRUPT BEFORE REFEREE WAS IN TEMPORARY RECESS, BUT WITHOUT GIVING BANKRUPT NOTICE OR OPPORTUNITY TO BE HEARD IN OPPOSITION THERETO, WAS NOT A DENIAL OF DUE PROCESS TO BANKRUPT UNDER THE CIRCUMSTANCES.

(In answer to Assignments of Error Numbers 2, 3, 6, 7, 8, 9 and 10 Petitioner's Direct and Concise Brief pages 7 and 8).

AUTHORITIES.

Bankruptcy Act as amended in 1938, Section 14(b);

Bankruptcy Act as amended in 1938, Section 58(b);

Rules of Civil Procedure for the District Courts of the United States, Section 6(b);

Bankruptcy General Order XXXVII;

1938 Collier-Bender Pamphlet Edition, Bankruptcy Act, page 51;

In Re: Bryant, 188 F. 530.

ARGUMENT.

Section 14(b) of the Act specifically contemplates that extension of time for making such objections may be granted by the court.

Section 58(b) of the Act, 11 U. S. C. A., Section 94(b), covering notices, provides only for notice to creditors, the Trustee, any United States Attorney, of the last date fixed for filing objections to the bankrupt's discharge. This Section, however, does provide for notice to the bankrupt of the time and place for hearing upon such objections.

Rules of Civil Procedure, Section 6(b) made applicable by Bankruptcy General Order XXXVII, provides that in its discretion, and without notice or motion, the Court may extend time for doing any act required to be done within a specified time, if application therefor is made before the expiration of the period originally prescribed, or if extended by a previous order.

Eighteen (18) days had lapsed between November 23, 1942, the date bankrupt was compelled to produce his books, and December 10, 1942, the date fixed for opposing the discharge.

The Trustee and his attorney had not had sufficient time to examine the mass of evidence produced in court and complete the examination of the bankrupt on his multifarious transactions. The court was in temporary recess on December 10, 1942, to afford the Trustee and his attorney an opportunity to partially inspect such records. (R. p. 3).

Creditors, usually living at distant points, are the ones foreclosed by expiration of time for filing objections. The Act contemplates that notice to them of such time is the paramount consideration. The bankrupt has not yet been denied his discharge.

The bankrupt cited no case, holding on similar facts, that due process had been denied. Respondent has been unable to find any.

Had the discharge been denied without notice or hearing, a substantial right would have been involved; the matter here complained of is procedural.

The Referee's own knowledge of the facts were sufficient "cause shown".

The lapse of time which has ensued has been due to the very detailed, extensive and necessary investigation of the bankrupt's affairs made by Respondent, and to the time consumed by these appellate proceedings.

RESPONDENT'S SECOND COUNTER-PROPOSITION.

A CREDITOR MAY APPLY FOR EXTENSIONS OF TIME FOR FILING OBJECTIONS TO DISCHARGES OF BANKRUPTS WHENEVER CIRCUMSTANCES REQUIRE.

(In answer to Assignment of Error Number 4, Petitioner's Concise Brief, page 7).

AUTHORITIES.

Bankruptcy Act, 1938 Amendment, Section 47(a) 9;

Bankruptcy Act, 1938 Amendment, Section 14(b);

Bankruptcy Act, 1938 Amendment, Section 58(b);

In Re: Levy, 127 F. 2d 62, (3rd Cir.);

In Re: Massa, 133 F. 2d 191, (2nd Cir.);

In Re: Weedemeyer, 32 F. S. 809, (D. C. E. D. N. Y.).

ARGUMENT.

Were the above proposition incorrect, the inclusion of the requirement in Sections 14(b) and 58(b) of the Act that creditors be notified of the time within which the bankrupt's discharge must be opposed, would be meaningless.

This is a no-asset case. Section 47(a) 9 of the Act, makes it the Trustee's duty to "oppose at the expense of the Estate the discharges of bankrupts", only "when they deem it advisable to do so". Thus,

the duty is discretionary with the Trustee, and in no-asset cases such as this (R. p. 9) seemingly, the Trustee has no duty to oppose at all. The Trustee has the privilege, but not the exclusive right, to oppose discharges. It is a privilege also enjoyed by creditors.

RESPONDENT'S THIRD COUNTER-PROPOSITION.

A CREDITOR OF THE BANKRUPT, HAVING THE RIGHT TO OPPOSE THE BANKRUPT'S DISCHARGE, MAY PETITION FOR AN EXTENSION OF TIME IN WHICH TO DO SO, THOUGH SUCH CREDITOR HAD NOT PREVIOUSLY PARTICIPATED ACTIVELY IN THE PROCEEDINGS.

(In answer to Assignments of Error Numbers 1 and 5, Petitioner's Concise Brief, pages 6-7).

AUTHORITIES.

Collier on Bankruptcy 14th Edition, Vol. 2, p. 274, Sec. 2106;

Beaven vs. Stuart, 250 F. 972, 41 A. B. R. 81; Cert. Den. 246 U. S. 676; 38 S. Ct. 426, 62 L. Ed. 933;

Re: Rose, 19 A. B. R. 169, D. C. Pa;

Re: Samuelson, 174 F. 911, 23 A. B. R. 528, D. C. N. Y.;

Re: Walker, 3 A. B. R. 35 D. C. N. D.;

Re: Eastern Utilities, Inv. Corp., 23 F. S. 719, Aff'd. 96 F. 2d 620; 37 A. B. R. ns. 510;

Re: Smith, 11 F. S. 463, 30 A. B. R. ns. 124, D. C. N. Y.;

Re: Prussian, 43 A. B. R. 13, 255 F. 857, D. C. Mich.;

Re: Dockins, 107 F. 33, 7th Cir.;

Re: Ruhlman, 279 F. 250, 2nd Cir.;

Remington on Bankruptcy, Section 3208.

ARGUMENT.

The above authorities amply support the rule that although a scheduled creditor's claim had not been filed or allowed the Creditor may still oppose the bankrupt's discharge or obtain an examination under Section 21(a).

The Dockins and Ruhlman cases and Remington on Bankruptcy, Section 3208, cited above, hold that a creditor who had not filed his claim may, nevertheless, oppose the discharge.

In the instant proceeding, the creditor's claim had been filed and allowed by the Referee, before the creditor petitioned for the extension of time.

RESPONDENT'S FOURTH COUNTER-PROPOSITION.

REFEREES IN BANKRUPTCY ARE NOT DISQUALIFIED TO ACT IN ANY CASE IN WHICH THEY ARE NOT DIRECTLY OR INDIRECTLY INTERESTED.

(In answer to Assignment of Error Number 11, Petitioner's Concise Brief, page 8).

AUTHORITIES.

Remington on Bankruptcy, Vol. 2, Section 595;

Bankruptcy Act as amended in 1938, Section 29(c);

Bankruptcy Act as amended in 1938, Section 39(b);

Re: Strobel, 155 F. 692, D. C. N. Y.;

Re: Abbe Press, 134 F. 51, Cert. Den., 196 U. S. 42; 49 L. Ed. 631, 25 Sup. Ct. 797;

Reiser vs. Woodruff, 112 F. 2d 652, 654; 10 Cir. 1940;

Re: C. W. Bartleson Co., 243 F. 1001;

Re: Fox West Coast Theatres, 88 F. 2d 212;

Re: Battani, 6 F. S. 378.

ARGUMENT.

The above authorities, generally, hold that the Referee is not disqualified to enter an order, the result of which may bring money into the Estate of the bankrupt, and thus, indirectly, result in the payment of commissions to him.

Bankruptcy Act Section 39(b) reads as follows:

> "Referees shall not act (1) in cases in which they are directly or indirectly interested."

While Respondent has found no case directly so holding, it is submitted that this Section applies to situations in which the Referee has a personal interest, direct or indirect, by reason of dealings

with or relationship to the bankrupt existing prior to the adjudication, or to a situation personal to the Referee, arising after bankruptcy constituting a direct or indirect interest, which might disqualify him, other than his prospective commissions.

Remington on Bankruptcy, Volume 2, Section 595, page 71 cites Tumey vs. State of Ohio, relied on by petitioner, as authority for the proposition that there must be a direct financial benefit resulting to the official from his act.

Certainly, no direct or indirect benefit could or would result to the Referee by virtue of the extension order complained of. The Tumey case does not sustain the proposition here urged by the petitioner.

Moreover, as stated in the Battani case, above, the Tumey case and other like cases, were criminal matters.

If the contention made by the petitioner were good law, the Referee would be, to a large extent, disqualified from functioning in almost every case in which there were assets, or where orders entered by the Referee resulted in bringing assets into the estate.

Were the petitioner's contention upheld, the Bankruptcy Act in large part would be overturned. Masters in Chancery likewise would be disqualified,

because of indirect and resultant compensation for their services, even though their reports are advisory.

All acts of the Referee are subject to Review by the District Judge, and at hearing before that court, on review, additional testimony may be called for by the court.

The Bankruptcy Act is not perfect. And it would be better if the measure proposed in Congress before the War started, placing Referees on a salary basis, were enacted into law. But experience has shown, however, that Referee's, generally, are men of highest integrity and scrupulous honesty.

Moreover, Bankruptcy Act Section 29(c) makes it an offense for a Referee to act in any case in which he is directly or indirectly interested. The last statement is from Remington on Bankruptcy Volume 2, Section 595, page 71.

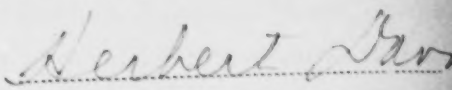
CONCLUSION.

In conclusion, Respondent submits that the overall picture in this case is such, as that there has been no denial of due process to the bankrupt under the circumstances here presented, and that this appeal is but an attempt by the bankrupt to obtain his discharge on technical grounds in the prospect, thereby,

of avoiding the gauntlet of the formal hearing in opposition to his discharge.

This case was correctly determined by the Circuit Court of Appeals, and the petition for Writ of Certiorari is without merit and should be denied.

Respectfully submitted,



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FILED
MAY 18 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1168

ALBERT C. DULANEY,

Petitioner,

vs.

M. COPPARD, TRUSTEE,

Respondent

REPLY BRIEF TO RESPONDENT'S BRIEF AS TO PETITION FOR WRIT OF CERTIORARI

ALBERT C. DULANEY,
803 Brady Building,
San Antonio 5, Texas,
Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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M. COPPARD, TRUSTEE,

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REPLY BRIEF TO RESPONDENT'S BRIEF AS TO PETITION FOR WRIT OF CERTIORARI

Respondent, in his Brief, says nothing about the text hereunder.

Again respondent admits the soundness of the legal proposition set out in Collier on Bankruptcy, 14th Edition, Volume II, Page 1594: "Reasonable notice and a right to be heard are requisite to the validity of any order issued by the Referee." On Page 5 of Respondent's brief a statement is made that petitioner has cited no case, holding on similar facts, that due process has been denied. After running through 14 editions, Collier has gathered together many cases all of which sustain the correct statement of the law found in the text, many of which hold on similar facts that due process had been denied, the principal involved being of universal application and its soundness cannot be suc-

cessfully questioned by anyone. Due process of law requires that every step in a judicial proceeding and before a referee in bankruptcy must be after a reasonable notice, a right to be heard, and every litigant having his day in court, or any such proceeding is void. On Page 14 of petitioner's concise brief, 16th Corpus Juris Segundum, 1141 et seq. concerning due process of law, states: "In the concrete, it (due process of law) means in a contest involving these rights (substantive rights) he (any person) will be accorded the opportunity to contest the propriety of each step in the action sought to be taken against him;" there *State* versus *Broaddus* is quoted, *City of St. Louis* versus *Railroad*, and *Dartmouth College* case. In this case the rights of women are vitally affected as to their property being handled for them, one of the owners being at death's door; respondent's purpose being plain to try to confiscate their property in order to make contingent fees and commissions. Respondent admits that Section 14(b) of the Bankruptcy Act specifically provides for extension of time "granted by the court"; this part of bankruptcy law alone applies although respondent quotes general order in bankruptcy 37, leaving out the material part of it as if notice and hearing were not necessary. General Order 37 expressly provides that in proceedings under the Bankruptcy Act the Rules of Civil Procedure for the District Court of the United States shall apply IN SO FAR AS THEY ARE NOT INCONSISTENT WITH THE ACT. The Bankruptcy Act itself as above quoted requires extensions of time to be granted in such cases by the court, which is inconsistent with Rule 6 of the Rules of Civil Procedure for United States District Courts. The mass of records and evidence referred to on Page 5 of respondent's brief has reference to other people's property being handled for them and not property personally of petitioner. More than 2½ years have been spent in trying to wear out these whose property is being investigated without right so that some

compromise may be forced by which defenseless women will have their property confiscated. Since the extension of time was to be granted by the court, reasonable notice, hearing, motion, evidence, all the requisites of due process were necessary. A judge or referee's own personal knowledge might disqualify him to sit but there must be the presentation in a judicial proceeding of evidence and the right to cross examine instead of having the referee make up his own mind secretly in his own office without any real proceedings, and really like the "Court of Star Chamber" if it could even be considered that good. On Page 6 of the respondent's brief he tries to maintain the soundness of the proposition that a creditor may apply for extension of time involved in this petition. In Collier on Bankruptcy, 14th Edition, Volume II, Page 280 et seq. the statement is there made: "It has been indicated that where creditor desires examination of a witness he should first apply to the * * * trustee and if refused, then apply to the court and show that the refusal was unwarranted." The soundness of this proposition of law is clear from decisions, although respondent's brief tries to show the opposite; the same thing applies to a creditor who has taken no part in the proceedings and has been guilty of laches or stale demand. This is a plain principle of equity. Objection is made in the respondent's brief to the *Tumey* case on the ground that it was a criminal case, but the language of the court written by Chief Justice Taft shows that this is a general principle applicable to all cases whether civil or criminal without distinction. In 50th A. L. R. 1256, the decisions are gathered together in a note and some of the cases are civil cases. The right to an impartial judge is a fundamental of justice, is necessary to due process of law or law of the land all the way back since before 1215, the date of the Great Charter. Respondent seeks to set aside all constitutional provisions by specious argument without citing correctly cases, stat-

utes, or other legal authorities, sometimes leaving out the important parts of sentences so as to try to convey the opposite meaning from that intended by the writer. The petition for writ of certiorari should be granted in order that the constitutional rights of the parties involved may be protected and property of defenseless women saved from confiscation at the hands of these who are thirsting for commissions and contingent fees.

Respectfully submitted,

ALBERT C. DULANEY,
Petitioner,
803 Brady Building,
San Antonio 5, Texas.

(8322)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1168

ALBERT C. DULANEY,

Petitioner,

vs.

M. COPPARD, TRUSTEE,

Respondent

MOTION FOR REHEARING AFTER DENIAL OF PETITION FOR WRIT OF CERTIORARI

PROCEDURE

Under the Article "Certiorari" in the 14th Volume Corpus Juris Segundum 230 e.

REHEARING

Rehearing on the judgment refusing the writ will be granted only for good cause and on application seasonably made.

This motion or application is seasonably made because Petitioner herein has not yet received official notice that Petition for Writ of Certiorari has been denied. The information has come to him in another way; that good cause is shown will be found out by reading this motion.

The Petition for Writ of Certiorari should certainly be granted by this Court because the Respondent herein in his brief admits the soundness of a legal proposition set out in Collier on Bankruptcy, 14th Ed., Vol. II, Page 1594, thereby admitting the soundness of the proposition which is set out in Collier at the place stated in the following words, "REASONABLE NOTICE AND A RIGHT TO BE HEARD ARE REQUISITE TO THE VALIDITY OF ANY ORDER ISSUED BY THE REFEREE."

In this matter there was printed, but apparently was not read in considering Petition for Writ of Certiorari, a reply brief to Respondent's brief as to Petition for Writ of Certiorari. On Page 5 of Respondent's brief a statement is made that Petitioner has cited no case, holding on similar facts, that due process has been denied. After running through 14 editions Collier has gathered together many cases, all of which sustain the correct statement of the law found in Collier on Bankruptcy, 14th Ed., Vol. II, Page 1594, many of which hold on similar facts that due process has been denied, the principle involved being of universal application and its soundness cannot be successfully questioned by anyone. Due process of law requires that every step in a judicial proceeding and before a referee in bankruptcy must be after a reasonable notice, a right to be heard, with every litigant having his day in court, or any such proceeding is void. Petitioner herein moves, therefore, that a rehearing be given to Petitioner herein upon his Petition for Writ of Certiorari considering said reply brief above referred to in this motion because since Respondent and Respondent's Attorney in brief of respondent say nothing about reasonable notice and a right to be heard are requisite to the validity of any order issued by the referee, there is a definite admission that the proposition is correct, the many cases cited in Collier supporting the text showing that a vital principle of constitutional

law, to-wit; due process of law requires referee's order in controversy in this Petition for Writ of Certiorari is to be held void because of the absence of notice and with no opportunity to be heard.

WHEREFORE, premises considered, Petitioner prays that a rehearing herein be granted and after this Court, or some judge thereof designated for the purpose, shall have considered Petitioner's reply brief and this motion, the Petition for Writ of Certiorari will be granted so that the important and vital principles of constitutional law involved which so disastrously affect the rights of people whose assets and funds are being handled by Petitioner, most of whom are defenseless women, one being at death's door and needing her assets and funds to save her life, and finally Petitioner prays for all proper relief under this said motion.

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